CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

INFORMATION NOTE No. 6
on the case-law of the Court
May 1999

Statistical information

		May	1999
I. Judgments delivered			
Grand Chamber		3	24
Chamber IV		4	7
II. Applications declared admissible			
Section I		5	11
Section II		24	82
Section III		40	81
Section IV		20	39
Total		**89**	**213**
III. Applications declared inadmissible			
Section I	- Chamber	4	25
	- Committee	50	213
Section II	- Chamber	17	52
	- Committee	50	147
Section III	- Chamber	10	55
	- Committee	50	219
Section IV	- Chamber	15	53
	- Committee	59	357
Total		**255**	**1121**
IV. Applications struck off			
Section I	- Chamber	1	5
	- Committee	0	11
Section II	- Chamber	0	4
	- Committee	0	3
Section III	- Chamber	0	4
	- Committee	0	1
Section IV	- Chamber	8	9
	- Committee	3	3
Total		**12**	**40**
Total number of decisions[1]		**356**	**1374**
V. Applications communicated			
Section I		11	173
Section II		16	118
Section III		21	152
Section IV		41	123
Total number of applications communicated		**89**	**556**

[1] **Not including partial decisions.**

ARTICLE 2

LIFE
Shooting of night-watchman during military operation: *violation*.

OGUR - Turkey (Nº 21594/93)
Judgment 20.5.99 [Grand Chamber]
(See Appendix I, below).

LIFE
Death of applicant's partner during police custody and alleged lack of proper investigation into death: *admissible*.

A.V. - Bulgaria (Nº 41488/98)
Decision 25.4.99 [Section IV]

In September 1994, T., of Roma origins and with whom the applicant lived, was arrested on suspicion of theft. He died in police custody some 12 hours after his arrest. A criminal investigation into the circumstances of his death was launched at the regional investigator's initiative. According to the autopsy, his death was caused by haemorrhages in the armpits, the arms and the left buttocks. In December 1995, the applicant's lawyer unsuccessfully urged the investigator to speed up the investigation. The lawyer filed a request with the prosecutor, but the latter issued an order suspending the criminal proceedings due to lack of evidence. However, following a request of the applicant in September 1996, the prosecutor issued an order reopening the investigation. The investigator allegedly refused to provide the applicant's lawyer with any information on the investigation. The lawyer filed a complaint with the prosecutor's office but received no answer. The prosecutor eventually replied to a second request to have the investigator removed by saying that no further investigation would be carried out as there were no clues as to the identity of the offender. There was no formal decision and in December 1997 the investigator told the lawyer that the investigation had not been given up.
Article 34: It has always been considered that a parent, a sibling or a nephew of a person whose death is alleged to engage the responsibility of the respondent Government may claim to be a victim of an alleged violation of Article 2 even where closer relatives, such as the deceased person's children, have not submitted applications. In all these cases, the question whether the applicant was the legal heir of the deceased person was without relevance. In the present case, the applicant lived with T. as a married couple for over 12 years and they had children together. Thus, there is no doubt that the applicant may claim to be a victim of alleged violations of the Convention as regards the death of T. and the subsequent investigation. Furthermore, a couple who have lived together for many years constitute a family for the purpose of Article 8 and are entitled to protection of the Convention notwithstanding the fact that their relationship exists outside marriage. Therefore, there is no valid reason to distinguish the applicant's situation from that of a spouse.
Admissible under Articles 2, 6, 13 and 14.

ARTICLE 3

INHUMAN TREATMENT
Conditions of detention of prisoners sentenced to death: *admissible*.

NAZARENKO - Ukraine (Nº 39483/98)
DANKEVICH - Ukraine (Nº 40679/98)
ALIEV - Ukraine (Nº 41220/98)
KHOKHLICH - Ukraine (Nº 41707/98)
Decisions 25.5.99 [Section IV]

The applicants have all been sentenced to death and put in separate cells to await execution. They complain about the generally poor conditions of their detention on "death row", and refer in particular to restrictions on visits rights and poor hygiene.
Admissible under Article 3.

EXPULSION
Expulsion to Iran of a member of a banned opposition party: *communicated.*

NAGHIPOUR - Netherlands (Nº 44737/98)
[Section I]

The applicant, of Iranian origin, entered the Netherlands and requested either recognition as a refugee or a residence permit on humanitarian grounds. He maintained that he was an active member of the Organisation of Revolutionary Workers in Iran (ORWI), a party banned by the Iranian government. He further claimed that he had been placed under the overly strict, and thus threatening, surveillance of the Iranian authorities since his return from a meeting held by the organisation in London. He stayed hidden for a while, fearing he would be caught and hanged, and eventually fled the country. The Dutch Deputy Minister of Justice nevertheless rejected his requests, considering that his allegations were not sufficiently credible. The applicant applied for administrative review to the Deputy Minister, who requested an advisory opinion from the Alien Advisory Board. The opinion was unfavourable, the board having found the allegations untenable. The Deputy Minister rejected the request for review. The applicant's appeal to the Regional Court was to no avail. He has not yet been expelled or returned to Iran.
Communicated under Article 3.

ARTICLE 5

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Arrest under the Prevention of Terrorism Act without being brought before any judicial authority: *communicated*.

MARSHALL - United Kingdom (Nº 41571/98)
[Section IV]

On 21 February 1998, the applicant was arrested in Northern Ireland by a military patrol under Section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989. He was brought to a holding centre where he was questioned about his involvement in serious paramilitary activity. On 27 February 1998, he was released without charge. While in detention he was never brought before any judicial authority, but had access to a solicitor.
Communicated under Articles 5 (3) and 15.

LENGTH OF PRE-TRIAL DETENTION
Applicant in pre-trial detention since June 1995: *communicated*.

KALASHNIKOV - Russia (Nº 47095/99)
[Section IV]

The applicant, president of a commercial bank, was charged with embezzlement and placed in detention on remand in June 1995. The examination of the case by the City Court started in November 1996, but was adjourned in May 1997. In February 1998, the applicant was informed that the City Court would not resume consideration of his case before July 1998, given the complexity of the case and the workload of the court. Despite numerous requests by the applicant to the judicial authorities to speed up the proceedings, the case is still pending before the City Court. He also complains about the poor conditions of his detention and the fact that he has been unable to see either his wife or his children since his placement in detention.
Communicated under Articles 5(3), 6(1), 3 and 8.

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Applicant claiming right to be included in the ancestry register, conferring entitlement to hold a title of nobility: *inadmissible*.

WOLFF METTERNICH - Netherlands (Nº 45908/99)
Decision 18.5.99 [Section I]

The family of the applicant's mother belongs to the Dutch nobility and is entitled to hold the noble title of Count (*Graaf*). The family of the applicant's father, however, does not belong to the Dutch nobility. Following his parents' divorce, the applicant officially changed his family name to his mother's maiden name. He then requested the authorities to include him in the Netherlands ancestry register, so as to be entitled to hold the noble title of *Graaf*. His request, as well as his appeals, were rejected on the ground that Dutch nobility was only transferred through the paternal line.
Inadmissible under Article 6(1): According to the Dutch Act on Nobility, noble status can be obtained in only three ways, i.e. at birth, by transmission via the paternal line; by elevation of a person belonging to the royal family; or by incorporation where a foreign person holding a noble status recognised in the country of origin obtains Dutch nationality. The applicant did not belong to any of these categories. The absence of any discretion in the applicable domestic statutory rules as to the enoblement of persons not being part of these three categories showed that no right was recognised in Dutch law. Therefore, the applicant's claim did not concern a "right" which could arguably be said to be recognised in the Netherlands and could not be regarded as falling within the scope of Article 6: incompatible *ratione materiae*.

ACCESS TO COURT
Non-enforcement of court decisions ordering the payment of invalidity pensions: *communicated*.

KAYSIN and others - Ukraine (Nº 46144/99)
[Section IV]

The applicants suffer from a condition directly caused by working in a mine for many years. The State has a large stake in the company operating the mine (a mining complex). The company failed to pay the applicants their invalidity pensions so they brought proceedings in the court of first instance, which ordered that the outstanding pension should be paid and set the monthly amount to be paid in the future. Writs of execution were sent to the company but it did nothing. Eventually, the president of the court ordered the company to comply with the judgments but it has not yet done so.
Communicated under Article 6(1) (fair hearing).

ACCESS TO COURT
Applicant's claim rejected without any examination in substance: *admissible*.

PLATAKOU - Greece (Nº 38460/97)
Decision 25.5.99 [Section II]

A piece of real estate belonging to the applicant was expropriated in December 1990. On 30 April 1993, the court of first instance provisionally assessed the level of compensation at 30,000,000 drachmas (GRD). The applicant applied to the court of appeal to have the final amount of compensation determined, submitting (with the help of a 1993 Ministry of Culture estimate) that the property was worth GRD 120,000,000. On 8 October 1993 her lawyer charged S.I., a court bailiff, with serving the application on the State. The bailiff had six months from the date of the court of first instance's decision to do this. He made a mistake and served the document slightly late. The State also applied for the final amount of the compensation to be determined. Its application was served on the applicant on 4 March 1994, The court of appeal declared both applications inadmissible as out of time, noting that the State had benefited from the fact that time had not run during the recess. The applicant applied to the court of appeal for the previous position in the case to be restored, arguing that she should not be held responsible for S.I.'s mistake. She also appealed to the Court of Cassation on points of law against the court of appeal judgment which had held her initial application inadmissible, together with an application for the previous position in the case to be restored. In November 1995 the court of appeal suspended its examination of the application for the previous position in the case to be restored pending the Court of Cassation's decision. In the reasoning of its decision, the Court of Cassation observed that the application for the previous position in the case to be restored should be dismissed but did not deal with that point in the operative part. The court of appeal, however, dismissed the application to have the earlier position in the case restored, on the ground that that application had already been dismissed by the Court of Cassation.
Admissible under Article 6(1) (access to a tribunal), taken both alone and in conjunction with Article 14 (equality of arms) and Article 1 of Protocol No. 1.

EQUALITY OF ARMS
Legislation providing that the case-file can be made available only to a party's lawyer and not to the party himself: *communicated*.

FRANGY - France (N° 42270/98)
[Section III]

The applicant filed a criminal complaint against persons unknown, together with an application to join the proceedings as a party claiming civil damages, stating that an AFP (Agence France-Presse) report and a number of newspapers had tarnished his reputation by presenting him as the ringleader of a big drug-trafficking operation. He then complained to the public prosecutor and the investigating judge about how slowly the investigation was proceeding. More than four years after he had filed his criminal complaint, he informed the judge that his lawyer was no longer acting for him, that he would be representing himself henceforward and that he accordingly wished to consult the case-file. As the judge did not reply, the applicant applied to the Indictments Division for a declaration that he was entitled to consult, in person, the documents relating to the investigation. His application was dismissed on the ground that, by statute, only a legal representative could have access to the case-file and receive copies of the case-documents. The applicant was told that the investigation had been completed and that the investigating judge had ordered that no prosecution should be brought,, on the ground that there was insufficient evidence that anyone had committed the alleged offences. The applicant has appealed. He complains of the length

of the proceedings (currently over five years and eight months) and of the denial of access to his case-file, which has made it impossible for him to represent himself.
Communicated under Article 6(1) (length and fairness).

EQUALITY OF ARMS
Suspension of procedural time-limit, during court vacation, in respect of the State but not the applicant: *admissible*.

PLATAKOU - Greece (Nº 38460/97)
Decision 25.5.99 [Section II]
(See above).

REASONABLE TIME
Length of civil proceedings: *règlement amiable*.

JAFFREDOU - France (Nº 39843/98)
Judgment 19.5.99 [Section III]

The case concerns the length of civil proceedings brought by the applicant on 16 May 1991 and still pending before the Court of Cassation.
The Government is willing to settle the case on the basis of payment to the applicant of the sum of 20,000 FF.

Article 6(1) [criminal]

CRIMINAL CHARGE
Proceedings before a court of inquiry, with the role of giving an opinion enabling Parliament to decide whether to institute proceedings against a former minister: *inadmissible*.

NINN-HANSEN - Denmark (Nº 28972/95)
Decision 18.5.99 [Section II]
(See below).

REASONABLE TIME
Length of criminal proceedings: *violation.*

LEDONNE (Nº1) - Italy (Nº 35742/97)
Judgment 4.5.99 [Section II]

The case concerned the length of criminal proceedings against the applicant (more than 5 years 5 months for one degree of jurisdiction).
Law: The Court considered that the case was not complex. It noted that the applicant's conduct had contributed to a certain extent to slowing down the proceedings, but recalled that Article 6 does not require accused persons actively to co-operate with the judicial authorities and that they cannot be reproached for making full use of the remedies available under domestic law. However, such conduct constitutes an objective fact, not capable of being attributed to the respondent State. In this case, even if the applicant could be considered to be responsible for some of the delays, this could not justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings. The Court

identified two periods of inactivity totalling more than two years and ten months imputable to the State's authorities and found that the Government had not provided any convincing explanation for these delays. It concluded that the period of more than five years and five months taken to consider the case fails to satisfy the "reasonable time" requirement.
Conclusion: Violation (5 votes to 2).
Article 41: The Court awarded the applicant 15,000,000 ITL as compensation for non-pecuniary damage but rejected his claims in respect of costs and expenses, noting that he had not submitted details of any costs incurred.

REASONABLE TIME
Length of criminal proceedings: *violation*.

LEDONNE (N°2) - Italy (N° 38414/97)
Judgment 4.5.99 [Section II]

The case concerned the length of criminal proceedings against the applicant (more than 4 years 11 months for one degree of jurisdiction).
Law: The Court considered that the case was not complex. As regards the applicant's conduct, it noted that even if the applicant could be considered to be responsible for some of the delays, this could not justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings. Referring to the adjournment of one hearing for almost a year because of a lawyers' strike, the Court recalled that such an event cannot in itself render a Contracting State liable with respect to the "reasonable time" requirement but that the efforts made by the State to reduce any resultant delay are to be taken into account for the purposes of determining whether the requirement has been complied with. Since neither party had replied to the Court's question as to the length of the strike, it was unable to determine what efforts had been made but observed that the period seemed at first sight unduly long. The Court identified periods of inactivity totalling more than one year and four months imputable to the State's authorities and found that the Government had not provided any convincing explanation for these delays, the volume of work at the court in question not being such an explanation. It concluded that the "reasonable time" requirement had not been met.
Conclusion: Violation (5 votes to 2).
Article 41: TheCourt awarded the applicant 12,000,000 ITL as compensation for non-pecuniary damage but rejected his claims in respect of costs and expenses, noting that he had not submitted details of any costs incurred.

REASONABLE TIME
Length of criminal proceedings: *violation*.

SACCOMANNO - Italy (N° 36719/97)
Judgment 12.5.99 [Section II]

In 1990 the applicant was charged with malicious accusation. Eventually, in 1997, he was acquitted on the ground that no offence had been made out. He complained of the length of the proceedings. The period to be taken into account was more than six years and four months for a single level of jurisdiction.
Law: The Court noted that the case had not been complex and that although some of the delays could be laid at the applicant's door, that did not justify the length of the intervals between hearings, nor, above all, the overall length of the proceedings. There had been several long periods of inactivity for which the Italian judicial authorities had been responsible and in respect of which the Government had advanced no possible explanation.
Conclusion: violation (unanimous).

Article 41. The Court awarded the applicant ITL 10,000,000 for non-pecuniary damage and ITL 1,500,000 for costs and expenses, but dismissed his claims in respect of pecuniary damage as it found no causal link between the violation of Article 6(1) and the economic loss claimed.

IMPARTIAL TRIBUNAL

Impartiality of lay judges appointed by Parliament to sit on a court of impeachment: *inadmissible*.

NINN-HANSEN - Denmark (Nº 28972/95)
Decision 18.5.99 [Section II]

The applicant was Minister of Justice from 1982 to 1989. In 1988, the Parliamentary Ombudsman started investigations into the Ministry of Justice's administration in 1986-88 of cases concerning applications by refugees from Sri Lanka for family reunification. The Ombudsman's report received considerable public attention and resulted in public criticism of the Government's refugee policy and especially of the applicant's actions. In July 1990, a court of inquiry was set up; 61 witnesses were heard, including the applicant, and more than a hundred sessions were held. The seven first sessions of the court were held *in camera*, but the rest of the proceedings were conducted in public, at the applicant's request; transcripts of the first sessions were also made available to the public. The Court of Inquiry's report of January 1993 contained severe criticism of the applicant's action and prompted Parliament to institute proceedings against him before the Court of Impeachment. The court, which was composed of an equal number of Supreme Court judges and lay judges appointed by Parliament, started examining the case in December 1993. The applicant was charged with having disregarded his duties as a minister. The Court of Impeachment allowed the use of the transcripts of the inquiry proceedings, which contained the witnesses' testimonies. In June 1994, the applicant had a stroke and the proceedings were adjourned. In April 1995, following medical expert opinions, the court decided to continue the examination of the case. The applicant was not present at the final stage of the proceedings but was represented by counsel. In June 1995, he was eventually convicted and sentenced to 4 months' imprisonment, suspended.

Proceedings before the Court of Inquiry - *Inadmissible* under Article 6(1) and (3): The purpose of the proceedings before the Court of Inquiry and of the court's report was to give Parliament an extensive opinion that would enable it to decide whether to institute proceedings against high-ranking officials having disregarded their duties while in office. Therefore, these pre-trial proceedings did not determine a criminal charge as such and the applicant's complaints relating to these proceedings taken on their own is incompatible *ratione materiae*. However, the inquiry and impeachment proceedings must also be considered as a whole, in order to determine whether the proceedings before the Court of Inquiry weakened the applicant's position to an extent that rendered all subsequent proceedings unfair. It appeared that the seven first sessions of the Court of Inquiry were held *in camera*, but that the applicant was granted access to all the court transcripts. Moreover, throughout the hearings he was offered legal assistance, which he declined. He was also protected from self-incrimination and could make submissions on an equal footing with the other witnesses. Thus, the inquiry proceedings did not affect his defence to the extent that the impeachment proceedings could not be fair: manifestly ill-founded.

Proceedings before the Court of Impeachment - *Inadmissible* under Article 6(1) (independent and impartial tribunal) and (2): The Court of Impeachment was composed of an equal number of professional judges and lay judges. The lay judges were appointed by Parliament for 6 years, with no possibility for Parliament to remove them once elected or influence them in any way. The mere fact that these judges were appointed by Parliament could not be seen as sufficient to cast doubt on their independence and impartiality. As to the impartiality of the Supreme Court judges taking part in the Court of Impeachment, what seemed decisive was

whether doubts could be held to be objectively justified. The Supreme Court on two occasions determined appeals against decisions of the Court of Inquiry, and four of the Supreme Court judges later participated in the Court of Impeachment; the scope and nature of these decisions had then to be taken into consideration. The decisions at issue concerned purely procedural matters and as such were not sufficient to cast doubt on the judges' impartiality. Furthermore, the fact that the judges participating in the Court of Impeachment were colleagues of those who had presided over the Court of Inquiry and that the sessions took place in the premises of the Supreme Court did not justify the applicant's doubts either. Finally, there was no evidence that the virulent press campaign influenced the judges at the prosecution or decision-making stages, jeopardising the presumption of innocence: manifestly ill-founded.

Inadmissible under Article 6(1) (fair hearing): The Court of Impeachment admitted the transcripts of the proceedings before the Court of Inquiry which contained statements made by the applicant and other witnesses so that, if necessary, the same persons appearing before the Court of Impeachment could be confronted with their own statements before the Court of Inquiry. This as such did not infringe on the applicant's rights under Article 6: manifestly ill-founded.

Inadmissible under Article 6(1) and (3)(c) and (d): As to the continuation of the proceedings before the Court of Impeachment despite the applicant's state of health, the court took its decision on the basis of extensive medical evidence. Relying on numerous medical opinions, it assumed that the applicant's health did not prevent him from being present at the remaining proceedings. However, it is of paramount importance that a defendant appears at his trial, because of his right to a hearing and the need to verify the accuracy of his statements and compare them with those of other witnesses; this is the more so if, as in the instant case, the court acts as sole instance. In the present circumstances, the applicant decided not to attend the remaining sessions of the trial. He was, nonetheless, adequately defended by counsel. Moreover, the major part of the trial had been concluded by the time he fell ill, the remaining part of the proceedings being the parties' closing statements: manifestly ill-founded.

Inadmissible under Article 6(1) (length of proceedings): The applicant could not be considered to have been substantially affected before the date on which he was officially informed of the Court of Inquiry's task and that he would be called as a witness. Thus, the period to be taken into account began in October 1990 and ended in June 1995, with the delivery of the judgment. Firstly, the Court of Inquiry had to investigate whether "anybody in public service or duty" had committed faults or negligence; 61 witnesses were heard in the course of these proceedings. Secondly, the Court of Impeachment had to determine whether the applicant was liable to punishment for having disregarded his duties while Minister of Justice; more than 40 witnesses were then heard. Finally, the only period of inactivity, between June 1994 and April 1995, was the direct consequence of the applicant's illness: manifestly ill-founded.

Article 6(2)

PRESUMPTION OF INNOCENCE
Order discontinuing criminal proceedings but stating the existence of doubts as to the accused's innocence: *communicated*.

MARZIANO - Italy (Nº 45313/99)
[Section II]

In 1983 the applicant married S. The couple had a daughter, X, in 1989. In 1993 they underwent a judicial separation. Custody of X was awarded to S., with access for the applicant. The following year, S. laid an information against the applicant for sexually abusing X. The applicant, assisted by a lawyer of his choice, was questioned by the public prosecutor. Medical evidence was inconclusive as to whether X had been sexually abused. The investigating judge applied for a more thorough investigation, in the course of which he or she questioned X, who confirmed that the applicant had sexually abused her. The charges against the applicant were, however, dropped by order of the investigating judge, who considered that, in the light of certain contradictions in X's testimony, it would be impossible to convict the applicant. The order stated, "... although the minor ... is not believed to be lying, the contradictions in her version of events indicate that a court would not be convinced of Mr Marziano's guilt on the charge as formulated".
Communicated under Article 6(1) and (2).

Article 6(3)(c)

DEFENCE IN PERSON
Applicant not present at the final stages of proceedings due to ill-health: *inadmissible*.

NINN-HANSEN - Denmark (Nº 28972/95)
Decision 18.5.99 [Section II]
(See Article 6(1) [criminal], above).

ARTICLE 8

PRIVATE LIFE
Obligation for local authorities to provide a disabled person with adequate housing: *inadmissible*.

MARZARI - Italy (Nº 36448/97)
Decision 4.5.99 [Section II]

The applicant, who suffers from a serious disease, has been recognised as 100% disabled. He was evicted from an apartment he had adapted to his condition. The local authorities allocated him a second apartment to which he reluctantly moved, considering that it did not meet his needs. A provincial law was enacted, which specified that the authorities had to provide 100% disabled persons with adequate housing. The applicant stopped paying his rent as a protest against the local authorities, in order to obtain the necessary modifications to his apartment. As a result, the authorities started proceedings for eviction in 1993. The authorities concurrently submitted to the applicant plans for the payment of the arrears in several instalments, which he refused. His eviction from the second apartment was regularly postponed on account of his condition, but finally took place in 1998. He went to live in a camper van, but had to be hospitalised, his health having deteriorated because of the unsuitable character of such accommodation. The hospital authorities stressed the urgency of finding a solution to his housing problem, the hospital not having the necessary facilities to keep him any longer. A specialised health commission found, upon the authorities' request, a suitable apartment, which was consequently allocated to the applicant. He refused it, but was nonetheless discharged from hospital; he was to be removed by the police.
Inadmissible under Article 8: Although this provision does not guarantee the right to have one's housing problem solved by the authorities, a refusal to provide assistance in this respect to an individual suffering from a serious disease might in certain circumstances raise an issue because of the impact of such a refusal on the private life of the individual. The applicant's eviction interfered with his right to private life. It was prescribed by Italian law and to the extent that it was aimed at recovering possession of the second apartment, the rent of which the applicant had stopped paying, the eviction had the legitimate purpose of protecting the rights of others. However relevant his serious condition was, considerable weight has to be given to the fact that the local authorities postponed his eviction from 1993 to 1998 and that he showed no signs of cooperation at all, refusing all proposals of settlement made by the authorities. Thus, there was no breach of the present provision as regards the eviction from the second apartment. As to the alleged failure to provide the applicant with adequate accommodation after his eviction from the second flat, the local authorities requested a specialised health commission to find a suitable apartment. The applicant refused the apartment selected by the commission and allocated by the authorities, claiming it was not adapted to his needs. However, it is not for the Court to review the decisions taken by the local authorities that were based on the assessment of a specialised health commission as to the allocation of the third apartment. No positive obligation for the local authorities can be inferred from Article 8 to provide the applicant with a specific apartment: manifestly ill-founded.

FAMILY LIFE
Detainee not allowed to see his wife and children since his placement in detention on remand in June 1995: *communicated*.

KALASHNIKOV - Russia (Nº 47095/99)
[Section IV]
(See Article 5(3), above).

ARTICLE 10

FREEDOM OF EXPRESSION
Defamation - reproduction of non-public official report: *violation.*

BLADET TROMSØ and STENSAAS - Norway (Nº 21980/93)
Judgment 20.5.99 [Grand Chamber]
(See Appendix II, below).

FREEDOM OF EXPRESSION
Prohibition on political activity by police officers: *no violation*.

REKVÉNYI - Hungary (Nº 25390/94)
Judgment 20.5.99 [Grand Chamber]
(See Appendix III, below).

ARTICLE 11

FREEDOM OF ASSOCIATION
Prohibition on police officers joining political parties: *no violation*.

REKVÉNYI - Hungary (Nº 25390/94)
Judgment 20.5.99 [Grand Chamber]
(See Appendix III, below).

FREEDOM OF ASSOCIATION
Employees of a municipality not entitled to form or join a trade union on account of their civil servant status: *communicated*.

DEMİR and BAYKARA - Turkey (Nº 34503/97)
[Section II]

The first applicant is a member of the Tüm Bel-Sen trade union and the second is its president. This trade union was created by the employees of several municipalities. The municipality of Gaziantep and a local branch of the trade union reached a collective agreement due to take effect on 1 January 1993. In June 1993, the first applicant instituted proceedings against the municipality for not complying with the agreement. The first instance court's decision being in favour of the trade union, the municipality lodged an appeal with the Court of Cassation. The court held that the employees of the municipality were legally classified as civil servants and as such were not entitled to form or join a trade union.

The first instance court, to which the case was referred, decided again in favour of the trade union, but the Court of Cassation quashed this new decision and the first instance court finally rejected the trade union's action.
Communicated under Article 11.

ARTICLE 14

DISCRIMINATION (Article 8)
Rights of succession of the child of an extra-marital relationship: *admissible and decision to hold a hearing*.

MAZUREK - France (N° 34406/96)
Decision 4.5.99 [Section III]

The applicant's mother married in 1937, thus legitimating A., a child born to her out of wedlock in 1936. The applicant was born during the marriage but only his mother was entered on his birth certificate as a parent, and she divorced her husband two years later. When their mother died, A. brought an action requesting the court to determine how the estate should be divided and seeking an order that the applicant, as the child of an adulterous relationship, could not lay claim to more than a quarter of it. The applicant submitted that the provisions of Article 760 of the Civil Code were discriminatory and asked the court to hold that he had the same inheritance rights as a legitimate child. The court found for A. It conceded that Article 760 represented a derogation from the principle, enshrined in the Civil Code, that legitimate and illegitimate children have equal rights, but held that its purpose was not to discriminate between children on the grounds of their birth but to enforce the marital obligations of a married parent who gives birth to an illegitimate child. The court of appeal upheld that judgment, holding that the Article in issue, which limits the inheritance rights of children born of adultery, was directly linked to the French legal principle of *ordre public*, under which marriage should be monogamous and the spouse and legitimate children of an adulterer should be protected. It also held that the provision did not intentionally discriminate against children born of adultery, since its purpose was not to disadvantage them but to protect the spouse and legitimate children of an adulterer. The case then went to the Court of Cassation, which held that rights of succession were not part of private and family life protected by Article 8 of the Convention. Before the Court, the applicant relied on Articles 8 and 14 and Article 1 of Protocol No. 1.
Article 35(1): With regard to the Government's objection that domestic remedies have not been exhausted [with regard to Article 1 of Protocol No. 1], the Court noted that in the court of appeal proceedings the applicant had expressly alleged a violation of that Article. It was true that he had not done so in the Court of Cassation, but one of the grounds of appeal at that stage had been that the court of appeal had given rise to unjustified discrimination on the grounds of birth by applying a legal provision permitting a reduction in the share of an estate to be attributed to a child born of an adultery where that child was opposed by a legitimate child. The Court therefore held that, on the particular facts and in view of the nature and manner of presentation of the issue before the domestic courts – an issue in which Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 were closely interwoven – the applicant could be deemed to have exhausted domestic remedies.
Admissible under Articles 8 and 14 and Article 1 of Protocol No. 1. The Section decided to hold a hearing on the merits.

DISCRIMINATION (Article of Protocol Nº 1)
Different treatment of widows and widowers regarding certain benefits: *admissible*.

WILLIS - United Kingdom (Nº 36042/97)
CORNWELL - United Kingdom (Nº 36578/97)
LEARY - United Kingdom (Nº 38890/97)
Decision 11.5.99 [Section III]

The applicants are widowers with dependant children. Under the Social Security Contributions and Benefits Act 1992, a widow in a similar position would be entitled to a Widow's Payment and a Widowed Mother's Allowance (and subsequently to a Widow's Pension). These are all contributory benefits. However, they are not available to widowers, for whom there are no equivalent benefits.
Admissible under Article 14 in conjunction with Article 8 and Article 1 of Protocol No. 1.
[The second application was also declared partly inadmissible, in respect of the period prior to his claiming benefits in 1997, his wife having died in 1989.]

NB. Four further cases concerning the same issue were communicated to the Government:

DOWNIE - United Kingdom (Nº 40161/98)
LOFFELMAN - United Kingdom (Nº 44585/98)
CAIRNEY - United Kingdom (Nº 45773/99)
ARKWELL - United Kingdom (Nº 47289/99)
[Section III]

DISCRIMINATION (Article 1 of Protocol Nº 1)
Difference of age at which men and women become eligible for an elderly person's travel permit: *communicated*.

MATTHEWS - United Kingdom (Nº 40302/98)
[Section III]

The applicant applied for an elderly person's travel permit, which would entitle him to free travel on most public transport in Greater London. His application was refused because, under UK law, such a permit may only be provided to men aged 65 or over, whereas women are eligible to receive it, subject to the provision of their local scheme, at the age of 60 or over.
Communicated under Article 14 and Article 1 of Protocol Nº 1.

DISCRIMINATION (Article 1 of Protocol No. 1)
Refusal to grant a disability allowance for adults to a national of the Ivory Coast: *communicated*.

KOUA POIRREZ - France (Nº 40892/98)
[Section III]
(see Article of Protocol No. 1, below).

ARTICLE 15

DEROGATION
Applicant arrested under the Prevention of Terrorism (Temporary Provisions) Act 1989: *communicated.*

MARSHALL - United Kingdom (Nº 41571/98)
[Section IV]
(See Article 5(3), above).

ARTICLE 30

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF THE GRAND CHAMBER
Restitution of property confiscated under the communist regime: *relinquishment of jurisdiction*.

MALHOUS - Czech Republic (Nº 33071/96)
[Section III]

Property belonging to the applicant's father was confiscated in 1948. Some of the plots were returned to the applicant, but those that had been transferred to the ownership of natural persons were not. The proceedings before the competent domestic authorities and courts for the restitution of his father's property were to no avail. The Commission in a similar case (Brežný and Brežný v. Slovakia, Decision 4.3.96, DR 85, p. 65) considered that where a law provides for entitlement to restitution of confiscated property subject to certain requirements, a "legitimate expectation" will not amount to a "possession" if these requirements, such as residence in or citizenship of the country where the property is located, are not met.
As neither party filed any objection to the proposed relinquishment, the Section relinquished jurisdiction in favour of the Grand Chamber.

ARTICLE 34

VICTIM
Application by a woman who had been lived for over 12 years with a person who died in police custody: *admissible*.

A.V. - Bulgaria (Nº 41488/98)
Decision 25.4.99 [Section IV]
(See Article 2, above).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Turkey)
Remedies in respect of shooting of night-watchman during military operation: *preliminary objection dismissed*.

OGUR - Turkey (Nº 21594/93)
Judgment 20.5.99 [Grand Chamber]
(See Appendix I, below).

EFFECTIVE DOMESTIC REMEDY
Extraordinary remedy dependent on the discretionary power of a public authority: *inadmissible*.

KUTCHERENKO - Ukraine (Nº 41974/98)
Decision 4.5.99 [Section IV]

The applicant, who was found guilty of an armed attack in which two people were killed, was sentenced to death. The Supreme Court confirmed that verdict on 7 August 1997. On February 1998 the applicant applied to the Supreme Court for a review of the decisions in his case. That application was declared inadmissible in a letter of 9 April 1998.
Inadmissible under Articles 6 and 3. The date on which the Convention came into force with regard to Ukraine and Ukraine's declaration of acceptance of the right of individual petition took effect was 11 September 1997. The last decision in the applicant's case was the Supreme Court's judgment of 7 August 1997 – before the Convention came into force with regard to Ukraine and Ukraine's declaration of acceptance of the right of individual petition took effect. As to the application which the Supreme Court declared inadmissible on 9 April 1998, it should be noted that this procedure for seeking a review of a final judicial decision can be used only by the public prosecutor or the president of the court which gave the decision to be reviewed or the latter's deputies. The applicant was not entitled to employ it and it therefore constituted an extraordinary remedy, not a remedy to be exhausted pursuant to Article 35(1). Hence, it cannot be taken into account in determining whether the Court has jurisdiction *ratione tempori :* incompatible *ratione temporis*.

SIX MONTH PERIOD
Date of the final domestic decision: *inadmissible*.

ARBORE - Italy (Nº 41840/98)
Decision 25.4.99 [Section IV]

In April 1962, the applicant lodged an appeal with the Court of Audit, seeking to have a decision refusing him a pension quashed. In January 1970, the case-file was transferred to the Minister of Finance, who ruled that the applicant was not entitled to a war invalid's pension. In June 1971, he lodged a second appeal with the Court of Audit, seeking to have that ruling quashed. In 1989 Principal State Counsel filed final submissions in both cases and asked for them to be joined. In March 1992, the Court of Audit gave a judgment in which it found partly for the applicant, severed the second case and transferred it to the Division dealing with war pensions. The applicant maintains that he did not know of this judgment until November

1997 since the court registry apparently failed to inform him of the date it was deposited (August 1992). In January 1993, the Division sent the applicant a copy of the operative provisions of that judgment. Proceedings in the Court of Audit are governed by the ordinary rules of civil procedure, including the rule on *res judicata*. Since the whole judgment had not been served on the applicant, the issues decided in it became *res judicata* one year and 45 days after it had been deposited with the registry, namely in September 1993. The second case is still pending in the Division which deals with war pensions.
Inadmissible under Article 6(1): the proceedings which commenced in April 1962. The two sets of proceedings were joined in 1989 then severed by a judgment of 1992, the second being transferred to a special court. The two sets are therefore distinct. As to the first, the Court of Audit judgment was deposited with the registry in August 1992 and its ruling become *res judicata* in September 1993 – that is, more than 6 months before application lodged: out of time.
Admissible under Article 6(1): the proceedings which commenced in June 1971 and which were still pending on 15 January 1999 (25 years and 5 months).

ARTICLE 1 OF PROTOCOL NO. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Reduction in value of pension: *communicated*.

JANKOVIĆ - Croatia (Nº 43440/98)
[Section IV]

The applicant was granted an old-age pension after retiring from the Yugoslav People's Army in 1987. In 1992 the Croatian authorities reduced the pension to about 63% of the original amount. The applicant's constitutional complaint, introduced in 1993, was dismissed by the Constitutional Court in March 1999.
Communicated under Article 1 of Protocol No. 1 and Article 14. [The application had already been communicated in respect of the length of the proceedings.]

PEACEFUL ENJOYMENT OF POSSESSIONS
Act retroactively imposing a limitation on the increase of school fees for private schools: *hearing*.

[ETABLISSEMENTS SCOLAIRES] DOUKA S.A. and others - Greece (Nº 38786/97)
[Section II]

The applicants are private schools. The amount which private schools could charge by way of school fees for the school year 1996-97 was affected by a retrospective law which came into force in May 1997. Under that law, private schools could not increase their fees by more than 7% compared with the previous school year, on pain of a fine. The applicants submit that the running costs of private schools went up by 13.25% during the school year 1996-97.
The Section decided to hold a hearing on whether domestic remedies had been exhausted and whether there had been a violation of Article 1 of Protocol No. 1 and Article 13 of the Convention.

PEACEFUL ENJOYMENT OF POSSESSIONS
Obvious underestimate of the value of property by the State in awarding compensation for expropriation*: admissible.*

PLATAKOU - Greece (Nº 38460/97)
Decision 25.5.99 [Section II]
(See Article 6(1) [civil], above).

POSSESSIONS
Refusal to grant a disability allowance for adults: *communicated.*

KOUA POIRREZ - France (Nº 40892/98)
[Section III]

The applicant, a citizen of the Ivory Coast, is physically disabled. He was adopted by a French national in July 1987, but his attempt to acquire French nationality by declaration in December 1987 was unsuccessful because he was over 18 at the time. He appealed against this refusal. He was given a disabled persons' card but the Family Allowance Office refused to award him the disabled adults' allowance. In May 1990 the applicant appealed to the administrative appeals board, which upheld the refusal on the grounds that the applicant was neither a French citizen nor a citizen of a country with which France had a reciprocal agreement as required by social security law. The applicant then appealed further, to the Social Security Tribunal, which, in June 1991, decided to stay the proceedings and to refer a question to the European Court of Justice in Luxembourg for a preliminary ruling. In December 1992, the ECJ ruled that the French legislation was compatible with EC law. In March 1993, the Social Security Tribunal dismissed the applicant's appeal. The court of appeal upheld that decision in June 1995 and the Court of Cassation dismissed the applicant's appeal on points of law in January 1998.
Communicated under Article 6(1) (reasonable time), Article 14 and Article 1 of Protocol No. 1.

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Expulsion to Yugoslavia: *refusal to apply Rule 39*.

BALAC - Netherlands (Nº 47813/99)
[Section I]

The applicant, a Yugoslav national of Muslim and Serbian origin, has spent most of her life in Sandjak, a region of Serbia with a large Muslim minority. Her parents have been granted political asylum in the Netherlands and her brother's application is still pending. She alleges that, while doing her studies in Belgrade, she was subjected to constant harassment because of her ethnic origin. In December 1996, she applied for asylum in the Netherlands or, alternatively, a residence permit on humanitarian grounds. The Deputy Minister of Justice rejected her request. Her appeal to the Regional Court was rejected too, no appeal lying against this last decision. In a decision of 31 March 1999, the Regional Court of the Hague held in another asylum case that given the position of Muslims from Sandjak and the current situation in and around Kosovo, existing uncertainties had to be balanced in favour of the asylum-seeker. The applicant could file another request for asylum or residence permit on humanitarian grounds, especially in view of the relevant new circumstances, i.e. the current

NATO actions and the aforementioned judgment of 31 March. Furthermore, it does not appear that any asylum-seeker of Muslim origin has been recently forcibly returned to Yugoslavia.
The Section decided not to apply Rule 39.

INTERIM MEASURES
Claim by applicants mentioned in confessions allegedly extorted by violence from a member of a Basque party to have been secretly accused although not charged: *refusal to apply Rule 39*.

AGIRRE and others - Spain (N° 48159/99)
Decision 18.5.99 [Section III]

A Spanish citizen, a member of a Basque political party, was arrested and held by the *Guardia Civil*. He maintains that, after being tortured and ill-treated, he signed a confession naming the six applicants. All documents relating to the matter have been kept secret under the *sub judice* rule. The applicants have not been officially charged but consider it likely that they will be arrested and held in custody and fear that they will then be subjected to treatment contrary to Article 3. They also invoked the protection of Articles 5 and 6 and requested the Court to apply Rule 39. They have volunteered to be examined by the judge dealing with the case and have requested a hearing to that end.
The Section considered that it was not necessary to apply Rule 39 since no proceedings against the applicants have been commenced. However, in the light of the object of the application, it decided to grant the applicants' request for it to apply Rule 40 and inform the respondent State of the introduction of the application and of a summary of its objects.

INTERIM MEASURES
Expulsion to Spain: *refusal to apply Rule 39*.

GOMEZ GORROCHATEGUI - France (N° 48132/99)
Decision 18.5.99 [Section III]
MONDRAGON ZABALA - France (N° 48133/99)
Decision 18.5.99 [Section III]

The applicants, who are Spanish nationals of Basque origin, were arrested in France and charged with criminal conspiracy in relation to their suspected membership of ETA. They were each convicted and sentenced to 5 years' imprisonment, to be deported at the end of their sentence and to be permanently excluded from French territory. Proceedings were commenced with a view to deporting them to Spain. The Commission on Deportation recommended that they should not be deported, pointing out that the judgments containing the exclusion orders had not yet become final. The applicants, fearing that they would be subjected to treatment contrary to Article 3 if handed over to the Spanish police, requested a Rule 39 indication to stop the French authorities deporting them.
The Section considered that it was not necessary to apply Rule 39 in either case but decided to apply Rule 40.

INTERIM MEASURES
Expulsion to Angola: *application of Rule 39.*

BODIKA - France (N° 48135/99)
Decision 18.5.99 [Section III]

The applicant, an Angolan national, states that in 1977, following a failed *coup d'Etat* led by a Government Minister, A., who he claims is his uncle, there were severe reprisals in his village, in which his mother and sisters were killed. He says he then joined an Angolan liberation group but was taken prisoner by Government forces, convicted, imprisoned and brutally treated. He says he succeeded in escaping and entered France in 1983. He was granted political asylum. In 1989 he was convicted of a drug offence and sentenced to 4 years' imprisonment, to be deported at the end of his sentence and to be permanently excluded from French territory. In 1992 he was sentenced to 5 years' imprisonment, to be deported at the end of his sentence and to be permanently excluded from French territory. An order constraining him to live in a particular place (restricted residence order) was imposed on him. His refugee status had been withdrawn in the light of the seriousness of his offences and his application to have the exclusion orders lifted was dismissed. The Minister of the Interior decided to discharge the restricted residence order. The applicant maintains that if he is sent back to his country of origin he will be at risk of treatment contrary to Article 3, and requested a Rule 39 indication.
The Section considered that it was necessary, on the facts, to apply Rule 39.

INTERIM MEASURES
Foreign lawyer unable to see client due to refusal of access to the country: *refusal to apply Rule 39.*

BIRDAL - Turkey (Nº 47520/99)
[Section I]

The applicant was convicted by a National Security Court of inciting the population to disobey the law on the basis of a distinction between races and regional origins.
His legal representatives in the Court proceedings are Mr Aslantaş and Mr Rud. Mr Rud, a Norwegian citizen, was declared *persona non grata* by the Turkish Government following his last visit to Turkey, during which he met Mr Öcalan's lawyers. Mr Rud submitted that it was essential for him to meet with the applicant, in particular before the latter started his sentence on 3 June 1999, and a Rule 39 request to this effect was submitted.
The Section noted that the essential steps in the proceedings so far, including the lodging of the application, had been undertaken by Mr Aslantaş, who is in close contact with the applicant. Moreover, neither the applicant nor Mr Aslantaş had submitted that personal conferences between the applicant and Mr Rud were necessary. When dealing with the issue of the effective representation of an applicant before it, the Court has stressed the importance of the ability to meet freely with one's lawyers in relation to the proceedings. However, the Section considered that the applicant's ability to confer regularly with one of his two lawyers – here, Mr Aslantaş – was sufficient to ensure that he would be represented effectively before the Court.
Accordingly, the Section refused to apply Rule 39.

APPENDIX I

Case of Oğur v. Turkey - Extract from press release

Facts: The applicant, Mrs Sariye Oğur, a Turkish national, was born in 1923 and lives in Sariyaprak, a district in the province of Siirt, where a state of emergency is in force. On 24 December 1990 security forces carried out an armed operation at a site belonging to a mining company some six kilometres from the village of Dağkonak. The applicant's son, Musa Oğur, who worked at the mine as a night-watchman, was killed at about 6.30 a.m. as he was about to come off duty. On 26 December 1990 the public prosecutor's office declared that it had no jurisdiction to institute proceedings against civil servants and forwarded the file to the Administrative Council of the province of Şırnak. On 15 August 1991 the Administrative Council delivered a decision in which it concluded that no proceedings should be brought in the criminal courts against the members of the security forces who had taken part in the operation of 24 December 1990. In its view, the victim had died after warning shots had been fired during the operation in question. Neither the evidence in the file nor taking statements from witnesses would make it possible, however, to identify with any certainty the person who had fired. On 19 September 1991 the Supreme Administrative Court upheld that decision.

The applicant complained of a violation of the right to life guaranteed under Article 2 of the Convention.

Law: Article 2 of the Convention:

A. The Government's preliminary objections.

(1) Failure to exhaust domestic remedies: The Government had maintained before the Court that the applicant had not exhausted the domestic remedies afforded her by Turkish law. The Court pointed out that in its judgment of 2 September 1998 in the case of Yaşa v. Turkey it had held that the applicant was not required to bring the same civil and administrative proceedings as those relied on by the Government before the Court. The Court saw no reason to depart from those conclusions in the case before it. As to the fact that the criminal proceedings had been instituted not by the applicant herself but by the victim's employer, the Court reiterated that the purpose of the rule that domestic remedies must be exhausted was to afford the Contracting States the opportunity of preventing or putting right – usually through the courts – the violations alleged against them before those violations were submitted to the Court. In the case before it, the requirement was satisfied, seeing that the complaint lodged by the victim's employer had had the same effect as one that could have been lodged by the applicant, namely that a criminal investigation had been opened.

(2) Estoppel: The Government had also submitted that the applicant was "estopped from making her allegations" as she had not appeared before the Commission's delegation responsible for taking statements from the witnesses in Ankara, although she had been invited to do so. The Court noted that the Government could themselves be regarded as estopped from raising that objection before it, since they had not done so before the Commission. As to the merits of the issue, the Court considered that in principle the fact that an applicant had not appeared personally before the Convention institutions did not affect the validity of complaints he had raised before them in good time, provided that he maintained his application, as the applicant had manifestly done in the case before it.

In conclusion, the Government's preliminary objections had to be dismissed.

B. Merits

(1) The death of the applicant's son: The Court noted, first of all, that none of those appearing before it had disputed that the victim had been killed by a bullet fired by the security forces. The disagreement related solely to whether that bullet came from a warning shot or from a shot fired at the victim, and on the circumstances in which the shot was fired. The Court noted that of all the witnesses interviewed, only the members of the security forces had stated that they had been the target of an armed attack. In the light of the evidence available, the Court considered that there was insufficient evidence to establish that the security forces had come under any armed attack at the scene of the incident. The Court

noted, further, that only one of the witnesses questioned had stated that verbal warnings had been given, while another had indicated that no warning had been given and a third witness had said that he could not remember what had happened. The Court concluded that there was not sufficient evidence to establish that the security forces had given the warnings usual in such cases. Several witnesses had explained the death of the applicant's son as having been caused by a warning shot and the Government had added, in their memorial, that as the shot had struck Musa Oğur in the nape of the neck, he had been running away. In that connection, the Court pointed out that, by definition, warning shots were fired into the air, with the gun almost vertical, so as to ensure that the suspect was not hit. That was all the more essential in the instant case as visibility was very poor. It was accordingly difficult to imagine that a genuine warning shot could have struck the victim in the neck. The Court consequently considered that, even supposing that Musa Oğur had been killed by a bullet fired as a warning, the firing of that shot had been badly executed, to the point of constituting gross negligence, whether the victim was running away or not.

In sum, all the deficiencies noted in the planning and execution of the operation in issue sufficed for it to be concluded that the use of force against Musa Oğur had been neither proportionate nor, accordingly, absolutely necessary in defence of any person from unlawful violence or to arrest the victim. There had therefore been a violation of Article 2 on that account.

Conclusion: Violation (16 votes to 1).

(2) The investigations by the national authorities: The Court reiterated that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force. The investigation should have been capable of leading to the identification and punishment of those responsible. The Court observed that when he inspected the scene of the incident, the Şırnak public prosecutor confined himself to noting findings in respect of the victim's body, making an inspection and a sketch of the scene, reconstructing the events and interviewing three witnesses, all of them night-watchmen colleagues of the victim. The Court observed, however, that here, too, a proper examination, in particular a ballistic test, could have revealed exactly when those items had been used. As to the witnesses questioned at the scene by the prosecutor, they were all members of the night-watchmen's team. No member of the security forces that had taken part in the operation was interviewed on that occasion. Lastly, the expert report prepared at the prosecutor's request contained information that was very imprecise and findings mostly unsupported by any established facts. The subsequent investigation carried out by the administrative investigation authorities had scarcely remedied the deficiencies noted above in that, again, no post-mortem or other forensic examination, notably in the form of ballistic tests, had been ordered and no members of the security forces that had taken part in the operation had been questioned, although their names were known. It had to be noted, lastly, that during the administrative investigation, the case file had been inaccessible to the victim's close relatives, who had had no means of learning what was in it. The Supreme Administrative Court had ruled on the decision of 15 August 1991 on the sole basis of the papers in the case, and that part of the proceedings had likewise been inaccessible to the victim's relatives.

In conclusion, the investigations in the case could not be regarded as effective investigations capable of leading to the identification and punishment of those responsible for the events in question. There had therefore been a violation of Article 2 on that account also.

Conclusion: Violation (unan.)

Article 41 of the Convention: The applicant had claimed 400,000 French francs (FRF) for pecuniary damage, FRF 100,000 for non-pecuniary damage and FRF 240,000 by way of reimbursement of her costs and expenses. The Court dismissed the claim in respect of pecuniary damage but, ruling on an equitable basis, awarded the applicant FRF 100,000 for non-pecuniary damage and FRF 30,000 for costs and expenses.

Judges Bonello and Gölcüklü expressed dissenting opinions and these are annexed to the judgment.

APPENDIX II

Case of Bladet Tromsø and Stensaas v. Norway - Extract from press release

Facts: The case concerns an application brought by two applicants. The first applicant is a limited liability company *Bladet Tromsø A/S*, which publishes the newspaper *Bladet Tromsø* in the town Tromsø in the northern part of Norway. At the relevant time it had a circulation of about 9,000 copies. The second applicant, Mr Pål Stensaas, was its editor. He is a Norwegian national, born in 1952, and lives at Nesbrua near Oslo. In March and April 1988 Mr Lindberg served as a seal hunting inspector, appointed by the Ministry of Fisheries, on board of the vessel *M/S Harmoni*. In his report of 30 June 1988 he alleged a series of violations of the seal hunting regulations and made allegations against five named crew members. The report claimed among other things that seals had been flayed alive. The Ministry of Fisheries subsequently decided that the report should not be published, relying on a provision of the Act on Public Access to Official Documents 1970 according to which reports containing allegations of statutory offences should not be made accessible to the public.

On 15 July 1988 *Bladet Tromsø* published an article by Mr Lindberg reproducing some of the allegations made in his report, which it had received from him. *Bladet Tromsø* published part of the report on 19 July 1988 and, on 20 July, the remainder of the report. The names of the five crew members concerned were deleted. In May 1991 the crew members of *Harmoni* brought defamation proceedings against the applicants. By judgment of 4 March 1992 the Nord-Troms District Court found that two statements published by *Bladet Tromsø* on 15 July 1988 and four statements published on 20 July were defamatory, "unlawful" and not proven to be true. One statement - "Seals skinned alive" - was deemed to mean that the seal hunters had committed acts of cruelty to the animals. Another was understood to imply that seal hunters had committed criminal assault on and threat against the seal hunting inspector. The remaining statements were taken to suggest that some (unnamed) seal hunters had killed four harp seals, the hunting of which was illegal in 1988. The District Court declared the statements null and void (*døde og maktesløse)* and, considering that the newspaper had acted negligently, ordered the newspaper and the editor to pay respectively NOK 10,000 and NOK 1,000 to each of the seventeen plaintiffs and their costs. The applicants were refused leave to appeal to the Supreme Court.

The applicants complained that the District Court's judgment of 4 March 1992 constituted an unjustified interference with their right to freedom of expression under Article 10 of the Convention, which provision had therefore been violated.

Law: The Court took account of the overall background against which the statements in question had been made, notably the controversy that seal hunting represented at the time in Norway and in Tromsø and the public interest in these matters. In the Court's view, the manner of reporting in question should not be considered solely by reference to the disputed articles in *Bladet Tromsø* on 15 and 20 July 1988 but in the wider context of the newspaper's coverage of the seal hunting issue. During the period from 15 to 23 July 1988 it published almost on a daily basis the different points of views including the newspaper's own comments, those of the Ministry of Fisheries, the Norwegian Sailors' Federation, *Greenpeace* and, above all, the seal hunters. There was a high degree of proximity in time, giving an overall picture of balanced news reporting. It appeared that the thrust of the impugned articles was not primarily to accuse certain individuals of committing offences against the seal hunting regulations or of cruelty to animals. However, Article 10 did not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern.

The Court examined whether there were any special grounds in the present case for dispensing the newspaper from its ordinary obligation to verify factual statements that were defamatory of private individuals. This depended, in particular on the nature and degree of the defamation at hand. While some of the accusations were relatively serious, the potential adverse effect of the impugned statements on each individual seal hunter's reputation or rights was significantly attenuated by several factors. In particular, the criticism was not an attack against all the crew members or any specific crew member. It also depended on the extent to which the *Bladet Tromsø* could reasonably regard the Lindberg report as reliable with respect to the allegations in question, in the light of the situation as it presented itself to the newspaper at the material time. The report had been drawn up by Mr Lindberg in an official capacity as an inspector appointed by the Ministry of Fisheries to monitor the seal hunt performed by the crew of *Harmoni* during the 1988 season. In the view of the Court, the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research. Otherwise, the vital public-watchdog role of the press could be undermined. Admittedly, the newspaper was already aware from the reactions to Mr Lindberg's statements in April 1988 that the crew disputed his competence and the truth of any allegations of "beastly killing methods". However, far more material was the fact that, prior to the contested publication on 15 July 1988, the Ministry had not publicly expressed a doubt as to the possible truth of the criticism or questioned Mr Lindberg's competence. Nor did the attitude expressed by the Ministry before 20 July 1988 suggest that it was unreasonable for the newspaper to regard as reliable the information contained in the report. It had not been suggested that the newspaper was acting in breach of the law on confidentiality.

Having regard to the various factors limiting the likely harm to the individual seal hunters' reputation and to the situation as it presented itself to *Bladet Tromsø* at the relevant time, the Court considered that the paper could reasonably rely on the official Lindberg report, without being required to carry out its own research into the accuracy of the facts reported. It saw no reason to doubt that the newspaper had acted in good faith in this respect.

In short, the reasons relied on by the respondent State, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society". There was no reasonable relationship of proportionality between the restrictions placed on the applicants' right to freedom of expression and the legitimate aim of protecting the seal hunters' "reputation or rights". Accordingly, the Court held that there haD been a violation of Article 10 of the Convention.

Conclusion: Violation (13 votes to 4).

Application of Article 41 of the Convention: The applicants claimed compensation for the economic loss suffered as a result of the District Court's judgment, ordering them to pay the plaintiffs NOK 187,000 in damages and NOK 136,342 for their costs. The Court awarded these sums in their entirety. The applicants also sought the reimbursement of NOK 652,229 in respect of costs and expenses in the domestic and the Strasbourg proceedings, of which the Court awarded them NOK 370,199. The applicants in addition claimed NOK 515,337 in interest and were awarded NOK 65,000 under this heading.

Judges Palm, Baka and Fuhrmann and Greve expressed separate opinions.

APPENDIX III

Case of Rekvényi v. Hungary - Extract from press release

Facts: The applicant, Mr László Rekvényi, a Hungarian national, was born in 1953 and lives in Budapest. At the material time, he was a police officer and the Secretary General of the Police Independent Trade Union. On 24 December 1993 Act no. 107 of 1993 on Certain Amendments to the Constitution was published in the Hungarian Official Gazette. This Act amended, *inter alia*, Article 40/B(4) of the Constitution to the effect that, as from 1 January 1994, members of the armed forces, the police and the security services were prohibited from joining any political party and from engaging in political activities. In a circular letter dated 28 January 1994 the Head of the National Police demanded, in view of the upcoming parliamentary elections, that policemen refrain from political activities. He referred to Article 40/B(4) of the Constitution as amended by Act no. 107 of 1993. He further indicated that those who wished to pursue political activities would have to leave the police. In a second circular letter dated 16 February 1994, the Head of the National Police declared that no exemption could be given from the prohibition contained in Article 40/B(4) of the Constitution. On 9 March 1994 the Police Independent Trade Union filed a constitutional complaint with the Constitutional Court claiming that Article 40/B(4) of the Constitution, as amended by Act no. 107 of 1993, infringed the constitutional rights of career members of the police, that it was contrary to the generally recognised rules of international law and that it had been adopted by Parliament unconstitutionally. On 11 April 1994 the Constitutional Court dismissed the constitutional complaint, holding that it had no competence to annul a provision of the Constitution itself.

Relying on Articles 10, 11 and 14 of the European Convention of Human Rights, the applicant complained that the impugned constitutional provision had amounted to an unjustified interference with his rights to freedom of expression and association and was of a discriminatory nature.

Law: Article 10 of the Convention:

The Court took it for granted that the pursuit of activities of a political nature came within the ambit of Article 10 in so far as freedom of political debate constituted a particular aspect of freedom of expression, being at the very core of the concept of a democratic society. The guarantees contained in Article 10 extend to military personnel and civil servants and the Court saw no reason to come to a different conclusion in respect of police officers. The Court found that there had been an interference with the applicant's right to freedom of expression. Such an interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.

According to the Court's well-established case-law, one of the requirements flowing from the expression "prescribed by law" is foreseeability. Nevertheless, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain. However, the level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed. Because of the general nature of constitutional provisions, the level of precision required of them may be lower than for other legislation.

Against the background of that statement of principles, the Court rejected the applicant's argument that the general constitutional ban on political activities by police officers failed to meet the requirement of foreseeability and that this was not rectified by any subsequent legislation including the 1994 Police Act. The Court was satisfied that the legal framework as a whole, including the contested constitutional prohibition and other legal rules partly permitting - occasionally subject to authorisation - and partly restricting the participation of police officers in certain kinds of political activities, was comprehensive enough to enable the applicant to regulate his conduct accordingly, if necessary after having sought advice

beforehand from a superior or clarification of the law by means of a court judgment. In the light of these considerations, the Court found that the interference was "prescribed by law" for the purposes of paragraph 2 of Article 10.
As regards the legitimate aim of the contested restriction, the Court accepted that it was intended to depoliticise the police force and thereby to contribute to the consolidation and maintenance of pluralistic democracy in Hungary. The Court was convinced that members of the public were entitled to expect that in their dealings with the police they would be confronted with politically-neutral officers who are detached from the political fray. In the Court's view, the desire to ensure that the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers is one that is compatible with democratic principles; this objective takes on a special historical significance in Hungary because of that country's experience of a totalitarian regime which relied to a great extent on its police's direct commitment to the ruling party. Accordingly, the Court concluded that the restriction in question pursued legitimate aims within the meaning of paragraph 2 of Article 10, namely the protection of national security and public safety and the prevention of disorder.
Further, having recapitulated its case-law on the basic principles concerning Article 10, the Court went on to conclude that, in view of the particular history of some Contracting States, the national authorities of these States might, so as to ensure the consolidation and maintenance of democracy, consider it necessary to have constitutional safeguards to achieve the aim of the police force's political neutrality by restricting the freedom of police officers to engage in political activities. Regard being had to the margin of appreciation left to the national authorities in this area, the Court found that the relevant measures taken in Hungary - a country that, between 1949 and 1989, was ruled by one political party and where, within the police force, membership of that party was expected as a manifestation of the individual's commitment to the regime - could be seen as answering a "pressing social need" in a democratic society. Moreover, an examination of the relevant laws showed that police officers had in fact remained entitled to undertake some activities enabling them to articulate their political opinions and preferences. Therefore, the Court concluded that the means employed in order to achieve the legitimate aims pursued had not been disproportionate. Accordingly, the impugned interference with the applicant's freedom of expression was not in violation of Article 10.
Conclusion: No violation (unan.)
Article 11 of the Convention:
The Court took the view that notwithstanding its autonomous role and particular sphere of application, Article 11 had in the present case also to be considered in the light of Article 10. The last sentence of paragraph 2 of Article 11 – which is undoubtedly applicable in the present case – entitles States to impose "lawful restrictions" on the exercise of the right to freedom of association by members of the police. The concept of lawfulness in the Convention, apart from positing conformity with domestic law, also implies qualitative requirements in the domestic law such as foreseeability and, generally, an absence of arbitrariness. In so far as the applicant criticised the basis in domestic law of the impugned restriction, the Court was satisfied that the constitutional prohibition on membership of a political party by police officers was in fact unambiguous and it would not appear to be arguable that subordinate legislation introduced earlier had been capable of affecting the scope thereof. In the circumstances the Court concluded that the legal position had been sufficiently clear to enable the applicant to regulate his conduct and that the requirement of foreseeability was accordingly satisfied. Further, the Court found no ground for holding the restriction imposed on the applicant's exercise of his freedom of association to be arbitrary. The contested restriction was consequently "lawful" within the meaning of Article 11 § 2. Moreover, it was not necessary in the present case to settle the disputed issue of the extent to which the interference in question was, by virtue of the second sentence of Article 11 § 2, excluded from being subject to the conditions other than lawfulness enumerated in the first sentence of that paragraph. For the reasons previously given in relation to Article 10, the Court considered that, in any event, the interference with the applicant's freedom of

association satisfied those conditions. In sum, the interference could be regarded as justified under paragraph 2 of Article 11. Accordingly, there had been no violation of Article 11 either.
Conclusion: No violation (16 votes to 1).
Article 14 of the Convention taken in conjunction with Articles 10 or 11: Although the Court's conclusions that the interferences with the applicant's freedoms of expression and association were justified under Articles 10 § 2 and 11 § 2 did not, as such, preclude the finding of a violation of Article 14 of the Convention, the considerations underlying those conclusions had already taken into account the applicant's special status as a police officer. These considerations were equally valid in the context of Article 14 and, even assuming that police officers could be taken to be in a comparable position to ordinary citizens, justified the difference of treatment complained of. There had accordingly been no violation of Article 14 taken in conjunction with Articles 10 or 11.
Conclusion: No violation (unan.)
Judge Fischbach expressed a partly dissenting opinion, which is annexed to the judgment.